

TABLE OF CONTENTS

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT
COMMONWEALTH'S MOTION TO DISMISS**

I. INTRODUCTION.....	2
II. APPLICABLE LAW.....	2
III. ARGUMENT.....	3
A. PLAINTIFF'S CAUSES OF ACTION ARE BARRED FROM JUDICIAL REVIEW UNDER THE DOCTRINES OF RES JUDICATA AND COLLATERAL ESTOPPEL.....	3
1. The claims raised in Plaintiff's complaint are barred by <i>res judicata</i>	6
2. The issues raised in Plaintiff's complaint are barred by collateral estoppel.....	8
B. PLAINTIFF'S COMPLAINT FAILS TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED.....	11
1. Plaintiff has failed to state a claim upon which relief can be granted under international, federal, or local law.....	11
2. Plaintiff has failed to state a claim upon which relief can be granted under the United States Constitution or the Commonwealth Constitution.....	16
a. Plaintiff stated no claim for equal protection under Fourteenth Amendment of the United States Constitution or Article 1, section 6, of the Commonwealth Constitution.....	16
b. Plaintiff has not asserted a claim upon which relief can be granted for violation of due process, under the Fifth or Fourteenth Amendment of the United States Constitution, or Article 1, section 5 of the Commonwealth Constitution.....	18
CONCLUSION.....	19

EXHIBITS

EXHIBIT A

Complaint for Declaratory, Injunctive, and Further Relief (CV-99-0046)

EXHIBIT B

Second Amended Complaint for Injunctive, Declaratory, and Further Relief (CV-99-0046)

EXHIBIT C

Third Amended Complaint for Injunctive, Declaratory and Further Relief (CV-00-0005)

EXHIBIT D

Order Consolidating Civil Action No. 02-0023 with Civil Action No. 99-0046 and Civil Action No. 00-0005

EXHIBIT E

Fifth Amended Complaint for Injunctive, Declaratory, and Further Relief (CV-00-0005)

EXHIBIT F

Settlement Agreement and Release (August of 2003)

EXHIBIT G

Stipulation of Dismissal (August 6, 2003)

EXHIBIT H

Public L. No. 110-229, 122 Stat. 853, Title VII

EXHIBIT I

Memorandum of Agreement between the US Dept. of Interior, Office of Insular Affairs and the Commonwealth of the Northern Mariana Islands *and* Letter of Understanding

TABLE OF AUTHORITIES

CASES

American Fabrics, Inc. v. L&L Textiles, Inc.,

754 F.2d 1524 (1985).....6

Balistreri v. Pacifica Police Dept.,

901 F.2d 696 (9th Cir.1988).....2

Barron v. Reich,

13 F.3d 1370 (9th Cir.1994).....9

Blonder-Tongue Lab. v. Univ. of Ill. Found.,

402 U.S. 313 (1971).....6

Board of Regents v. Roth,

408 U.S. 564 (1972).....19

Cammermeyer v. Aspin,

850 F.Supp. 910 (W.D. Wash. 1994).....17

Canadian Transp. Co. v. United States,

663 F.2d 1081 (C.A.D.C.1980).....12

Commodity Futures Trading Comm'n v. Co. Petro Mktg. Group, Inc.,

680 F.2d 573 (9th Cir.1982).....6

Costantini v. Trans World Airlines,

681 F.2d 1199 (9th Cir. 1982).....7

Davis Wright & Jones v. Nat'l Union Fire Ins. Co.,

709 F.Supp. 196 (W.D.Wa.1989) *aff'd*, 897 F.2d 1021 (9th Cir.1990).....6

Durfee v. Duke,

375 U.S. 106 (1963).....6

Goldstar (Panama) S.A. v. United States,

967 F.2d 965 (C.A.4 1992).....12

Green v. Ancora-Citronelle Corp.,

577 F.2d 1380 (9th Cir.1978).....10

Hadley v. Cowan,

60 Wash.App. 433 (1991).....7

Hydranautics v. Filmtec Corp.,

204 F.3d 880 (9th Cir.2000).....9

In re Berr,

172 B.R. 299 (9th Cir. BAP 1994).....9

Jackson Water Works, Inc. v. Public Utilities Com'n of State of Cal.,

793 F.2d 1090 (C.A.9 1986).....17

LeBire v. Dep't of Labor & Indus.,

14 Wash.2d 407 (1942)..... 7

Mack v. South Bay Beer Distribs., Inc.,

798 F.2d 1279 (9th Cir. 1986).....9

Mannington Mills, Inc. v. Congoleum Corp.,

595 F.2d 1287 (C.A.3 1979).....12

McLean v. Crabtree,

173 F.3d 1176 (C.A.9 Or. 1999).....16

Medellin v. Texas,

128 S.Ct. 1346, 1356 (U.S. Tex. 2008).....12, 13

1	<i>Montana v. United States,</i>	
2	440 U.S. 147 (1979).....	6, 18
3	<i>Offshore Sportswear, Inc. v. Vuarnet Int'l, B.V.,</i>	
4	114 F.3d 848 (9th Cir.1997).....	9
5	<i>Pierre v. Gonzales,</i>	
6	502 F.3d 109 (C.A.2 2007).....	13
7	<i>Pillsbury, Madison & Sutro v. Lerner,</i>	
8	31 F.3d 924 (9th Cir.1994).....	2
9	<i>Sagana v. Tenorio,</i>	
10	384 F.3d 731 (9th Cir. 2004).....	16
11	<i>Scott v. Kuhlmann,</i>	
12	746 F.2d 1377 (9th Cir.1984).....	6
13	<i>Segal v. American Tel. & Tel. Co.,</i>	
14	606 F.2d 842 (9th Cir.1979).....	8
15	<i>Sidney v. Zah,</i>	
16	718 F.2d 1453 (9th Cir.1983).....	8
17	<i>Stoll v. Gottlieb,</i>	
18	305 U.S. 165 (1938).....	6
19	<i>Taha v. Portland State Univ.,</i>	
20	875 F.2d 319 (CA 9 th Cir. 1989).....	7
21	<i>Title v. United States,</i>	
22	263 F.2d 28 (9th Cir.1959).....	6
23	<i>United States v. Emuegbunam,</i>	
24	268 F.3d 377 (C.A.6 2001).....	12
25		

United States v. Jimenez-Nava,

243 F.3d 192 (C.A.5 2001).....12

United States v. Li,

206 F.3d 56 (C.A.1 2000).....12

United States v. Lopez-Flores,

63 F.3d 1468 (9th Cir. 1995).....16

Yanow v. Weyerhauser Steamship Co.,

274 F.2d 274 (9th Cir.1959).....6

Zimmerman v. City of Oakland,

255 F.3d 734 (9th Cir.2001).....2

UNITED STATES STATUTES

1967 United Nations Protocol Relating to the Status of Refugees,

Jan. 31, 1967, 19 U.S.T. 6224, 606 U.N.T.S. 8791.....13, 14, 18

Public L. No. 110-229, 122 Stat. 754 (2008).....14,15

Public L. No. 94-241, 90 Stat. 263,

reprinted in 48 U.S.C. § 1801 (1994) (note at 400).....14,15

8 U.S.C. §§ 1101, *et seq.*.....13

Federal Rules of Civil Procedure

Fed. R. Civ. P. 12(b)(6).....2

Federal Rules of Evidence

Fed.R.Evid. 201(b)(2) & (f).....6

COMMONWEALTH STATUTES

3 CMC § 4301, <i>et seq.</i>	14
N.M.I. Covenant § 105.....	14
N.M.I. Covenant § 501(a).....	11, 14, 16, 17, 18
N.M.I. Covenant § 503.....	14
Public L. No. 13-61.....	5, 14, 15

UNITED STATES REGULATIONS

8 C.F.R. § 207.7 (d) (2008).....	13
----------------------------------	----

COMMONWEALTH REGULATIONS

<i>Commonwealth Immigration Regulations</i> , §5-40.1-944.....	14, 18
--	--------

TREATIES

Article 3 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, December 10, 1984, S. Treaty Doc. No. 100-20 (1988), 1465 U.N.T.S. 85 (ratified by the (United States on Nov. 20, 1994).....	4, 13, 14
---	-----------

TREATISES

2 RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW OF THE UNITED STATES § 907, Cmt. a, p. 395 (1986).....	12
--	----

MISCELLANEOUS

Executive Order No. 12,807 (May 24, 1992).....13

Memorandum of Agreement between the CNMI and the United States Dept. of Interior,
Office of Insular Affairs, executed on September 12, 2003.....14